JD–30–20
St. Louis, MO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC

NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 343 (UNITED STATES POSTAL SERVICE),

Respondent

and Case 14–CB–246743

JANAYAH DUNLAP,

an Individual

Bradley A. Fink, Esq.,
for the General Counsel.
Joshua J. Ellison, Esq. and
Marie B. Hahn, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in St. Louis, Missouri, on January 7, 2020.[1] The Charging Party, Janayah Dunlap (Charging Party/Dunlap), filed the charge in Case 14–CB–246743 on August 19.[2] Dunlap filed an amended charge on November 7. The Regional Director for Region 14 of the National Labor Relations Board (NLRB/the Board) issued a complaint and notice of hearing on November 7. The National Association of Letter Carriers, Branch 343 (the Respondent) filed a timely answer denying all material allegations in the complaint.

[1] All dates are in 2019, unless otherwise indicated.

[2] General Counsel's exhibits, Respondent's exhibits, and Charging Party's exhibits are identified as "GC Exh.," "R. Exh." and "CP Exh.," respectively. Joint exhibits are identified as "Jt. Exh." The hearing transcript is identified as "Tr." The General Counsel and Respondent posthearing briefs are identified as "GC Br." and "R. Br.," respectively. The Charging Party did not introduce exhibits into the record or file a posthearing brief.

The complaint alleges that Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act (NLRA/the Act) when on about August 15: (1) the Respondent, by shop steward Gregory Stelfox (Stelfox), at the St. Louis Facility, restrained and coerced employees by telling employees that the Respondent would not help nonmembers; (2) the Respondent, by Stelfox, threatened to not process grievances filed by nonmembers; and (3) the Respondent, by President Robert Rapisardo (Rapisardo), restrained and coerced employees by stating that he did not have to speak with, or waste time on, nonmembers in violation of Section 8(b)(1)(A) of the Act and within the meaning of Section 1209 of the Postal Reorganization Act 39 U.S.C. § 101, et seq. (PRA).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (the Employer/USPS) provides postal service for the United States and operates facilities nationwide, including in the State of Missouri and its facility located at 1720 Market Street, St. Louis, Missouri (Carrier Square/Wheeler facility).[3] The Respondent admits and I find that of the PRA gives the NLRB jurisdiction over the Respondent in this matter.

At all material times, the National Association of Letter Carriers (National Union) has been a labor organization within the meaning of Section 2(5) of the Act; and the exclusive collective-bargaining representative based on Section 9(a) of the Act. The Employer's recognition of the National Union's representational role has been embodied in successive collective-bargaining agreements (CBA), the most recent of which was effective from May 21, 2016 to September 20, 2019. I find, and the Respondent admits that it has been an agent of the National Union for purposes of representation of unit employees employed at the Wheeler facility.

The following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All city letter carriers, excluding all managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all Postal Inspection Service employees; employees in the supplemental work force as defined in Article 7 of the parties' collective bargaining agreement; rural letter carriers; mail handlers; maintenance employees; special delivery messengers; motor vehicle employees; and Postal clerks. (GC Exh. 1.)

[3] During the hearing, witnesses also referred to the location as the Downtown facility.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operation

The Respondent is a local branch of the National Union and represents about 2600 members and 40 nonmembers in the St. Louis metropolitan area. Since January 14, 2018 and continuing, Rapisardo has been detailed as president of the local. Prior to his detail, Rapisardo was the Respondent's vice president—financial secretary starting in January 2012. From 1977 through 2011, he was a city letter carrier and for part of that time also served as a union steward in the USPS' Clayton Station.

Stelfox has been a letter carrier for about 35 years and a union steward at the Wheeler station for about 5 years. Since November 2018, Stelfox's letter carrier assignment has included express mail pickups at the airport. Consequently, each morning he leaves almost immediately after "clocking in" for work, thus taking him away from the Wheeler station for about 2-1/2 hours each morning. Often when he returns from the airport run, the other carriers have left for the day to deliver their routes.[4] As a union steward, Stelfox is responsible for processing and, if applicable, settling grievances at the informal step A level; but is not responsible for canvassing letter carriers about their membership status. (Tr. 70; GC Exh. 2, art. 15.)

B. Dunlap's Encounter with Stelfox on June 4

Dunlap has been employed with the Respondent as a letter carrier for approximately 13 years. She currently works at the USPS' Creve Coeur station but during the period at issue she was assigned to the Wheeler station. She was a union member until she terminated her membership in 2017.

On June 4, Dunlap was delivering her route when the postal vehicle experienced mechanical difficulties. Stelfox was sent to bring Dunlap another truck. He helped her transfer the mail into the new truck; and she then drove him back to the station before finishing her route. They engaged in "general" conversation on the 20-minute ride to the station.[5] According to Dunlap on the car ride back to the station, Stelfox told her that he was a union steward and she replied that she was not in the Union. She testified that Stelfox did not respond. Stelfox corroborates Dunlap's account of their interaction on June 4, except he denies asking her if she was in the union and denies she volunteered the information about her membership status. According to Stelfox, he did not tell Dunlap that he was a steward; and testified they did not talk about the Union on the short ride back to the station.

[4] In 2019, Stelfox worked with Dunlap in the Wheeler station but rarely interacted with her or the other carriers because of his airport express mail assignment.

[5] The "general" conversation covered topics on Stelfox's poker playing, Dunlap's mail route, where to leave the broken vehicle's keys and "regular shop" talk.

C. Dunlap's Complaint to Stelfox About an Alleged Dress Code Violation

After their encounter on June 4, there is no evidence that Dunlap and Stelfox had any meaningful conversations until August. During the first week in August, Dunlap approached Stelfox and asked if he was a union steward. After he answered yes, Dunlap complained to him that she felt management was harassing her over the length of her uniform shorts. Stelfox responded that he would research the approved dress code for female carriers and report back to her. The conversation lasted about 1 minute. Shortly before August 8, Stelfox told her that after speaking with some of the female carriers, he learned the requirement for the female carriers' shorts were no higher than 4–6 inches above the kneecap. She replied, "[t]hat's the way they came from the Union" so he suggested she may be able to have them tailored to the authorized length. During their conversations about the dress code, Stelfox never asked Dunlap if she were a union member or otherwise commented on her union status.

Stelfox admits that "not long after" their conversation about the shorts, he observed that Dunlap was upset and asked if she was in the Union to which she responded, 'What does that have to do with anything?' He responded "nothing" and that the Union represents employees regardless of their membership status.[6] According to Stelfox, he asked about her union status because

> There's vast [union] resources available. There's meetings scheduled twice a month. There's educational classes, there's seminars. There is all kinds of things to educate her, to—to help her, that—and we could—I was going to extend an invitation to come down and we'll talk and—

(Tr. 78.) By letter dated August 3, Smith issued Dunlap a letter of warning (LOW) for unscheduled absences and failing to maintain a regular work schedule. The LOW listed 19 unscheduled absences as the basis for the LOW. Dunlap received it on August 8, from Tamara [last name unknown], a supervisor. Towards the end of the workday, Tamara handed the LOW to Dunlap while she was at her workstation; and told Dunlap the LOW would be placed in her personnel file. During the conversation with Stelfox where he asked Dunlap if she was in the Union, she did not tell him that she had received the LOW or ask him to file a grievance on her behalf.[7]

D. PreDisciplinary Interview on August 9

On August 9, USPS Station Manager Antoinette Perkins (Perkins) asked Stelfox to bring Dunlap to her office for a predisciplinary interview (PDI) about her alleged violation of dress code. Prior to the PDI, Stelfox told Dunlap his goal in the meeting was to reach a settlement, discussed with her their "parameters," and asked for her settlement demand. The PDI occurred in the morning and included Stelfox, Dunlap, Perkins, and Supervisor Shaniqueka Smith (Smith). Stelfox took notes in the meeting documenting the discussion. (R. Exh. 1.)

[6] According to Stelfox, the conversation occurred early in August but prior to August 9.

[7] Although it is not clear from the record, Dunlap may not have received the LOW prior to this conversation with Stelfox.

According to Stelfox, the meeting was unproductive because Dunlap became emotional and began screaming, yelling, crying, using profanity, and name calling. Consequently, he stopped the meeting which lasted about 10 minutes. Dunlap acknowledges she attended a PDI on August 9 with Stelfox representing her and he made no mention of her union status. Likewise, the LOW was not discussed during the PDI.

E. Meeting on August 14 between Dunlap and Stelfox

Dunlap felt the LOW that she received on August 8 for unscheduled absences was unjustified because she believed that a few of the dates listed in the LOW were covered by the Family Medical Leave Act (FMLA). Consequently, she called "Shared Services" when she got home for confirmation of which dates were covered by FMLA and compared them to the dates listed in the LOW.[8] On her copy of the LOW, Dunlap marked the absences that were covered under the FMLA. (Tr. 22.)

According to Dunlap's version of events, after receiving verification from "Shared Services" on the FMLA covered dates, on August 14, she gave Stelfox her annotated LOW but did not retain a copy. (Tr. 22–23.) It is undisputed that Dunlap complained to Stelfox that some of the dates listed in the LOW were covered under FMLA and should not have been used as a basis for the LOW. Although Stelfox testified that he asked Dunlap to give him a statement explaining her version of the dispute and documentation to support her FMLA argument, she disputes his assertion. Dunlap argues that Stelfox never asked her for a statement or FMLA documentation but rather on August 14, she offered to give him documentation to support her FMLA argument and was going to prepare a statement. She knew a statement was required when filing a grievance. (Tr. 60.) However, she claims that on August 14, she did not give Stelfox the information for fear she would be disciplined for conducting union business during work hours. Dunlap testified that it was her belief she could not give Stelfox paperwork until management authorized her to be on union time.[9] Moreover, Dunlap claims Stelfox kept voicing concern that Perkins would comment on him talking to her before receiving authorization from management for them to meet about union matters during work hours. It is undisputed that Dunlap never gave Stelfox a statement nor documents supporting her FMLA allegation.[10]

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[8] Presumably Dunlap called Shared Services the same date that she received the LOW, August 8.

[9] Dunlap gave undisputed testimony that the timekeeping code for authorized performance of union business during work hours is code 613. (Tr. 58–59.)

[10] Dunlap gave conflicting testimony on providing or preparing a statement explaining the dispute. First, she testified that on August 14 she volunteered to give Stelfox a statement and FMLA documentation but claims before she could give it to him, Stelfox settled the grievance. (Tr. 37–39.) Later in her testimony, Dunlap claimed that she had actually prepared a statement, but the matter was settled before she could give it to Stelfox. (Tr. 58–60.) Then she again changed her testimony to "I offered him the documentation on the [August] 14th. I was *going* to prepare a statement at the plant." (Emphasis added.) (Tr. 61.) Stelfox, in contrast, was straightforward and unwavering in his testimony that he asked Dunlap to provide him with a statement and FMLA documentation. Moreover, the evidence is undisputed that the neither was

Stelfox testified to a slightly different version of his interaction with Dunlap on August 14. According to him, within about 3 to 5 days of receiving the LOW, Dunlap came to inform him about it. Stelfox testified that he did not learn about the LOW until perhaps as late as August 13. Although he testified that he could not recall how he became aware of the LOW, he believes that he learned of it from a supervisor. Based on his testimony, Stelfox obviously did not have a clear recollection of how he learned of the LOW or when he received a copy. He testified in part, "I am not a hundred percent sure, but I believe management ran me a copy of [the LOW] and left it on my case, so when I was done with my route, I would have it." (Tr. 89–90.) Since Dunlap stated several times that she first spoke with Stelfox about the LOW and gave it to him on August 14, I credit her testimony on this point. (Tr. 22–23, 34, 37, 61.) According to Stelfox, Dunlap did not take a position on what she wanted him to do about the LOW; and she also did not tell him that she would grieve the matter herself. Noting that although Dunlap did not ask him to file a grievance on her behalf, Stelfox filed it because "you have to file a grievance, and then you can go through the step process to settle it." (Tr. 92.)

F. Stelfox's Grievance Negotiations

Since Stelfox filed a grievance on behalf of Dunlap, he was able to begin discussions with Perkins towards settling the LOW dispute. Although Stelfox filed a grievance on the LOW and settled it the same date, he had spoken with Perkins about resolving the dispute on several occasions prior to filing the grievance. It took him about six short discussions with Perkins for them to reach an agreement. Pursuant to the settlement agreement, the LOW would remain in Dunlap's personnel file for 6 months.[11]

Stelfox admits that he did not keep Dunlap apprised of his ongoing settlement discussions with Perkins but claims that he "tried." Moreover, he did not consult with Dunlap on August 15 before he settled the grievance. Stelfox did, however, speak with Rapisardo and Andre Hayes (Hayes) for their input on his settlement negotiations with Perkins.[12] Stelfox telephoned Rapisardo about the LOW issued to Dunlap because he wanted Rapisardo's advice on filing a grievance over it. He went to Rapisardo's to discuss the situation. Stelfox had a packet with him that contained the LOW and his notes. Rapisardo asked Stelfox if he had a statement from Dunlap about the events and supporting documentation for the FMLA but Stelfox responded that he had asked Dunlap several times for the information with no success. Consequently, Rapisardo told Stelfox not to attend the grievance meeting unless the Union's grievance packet was complete. Stelfox showed him the offer management made to settle the matter. Rapisardo told him the settlement terms appeared to be fair; but it was solely Stelfox's decision to decide whether to accept the settlement offer. On August 15 or 16 before noon, Stelfox informed Rapisardo that he had settled Dunlap's grievance. Stelfox hand-delivered a copy of the executed settlement agreement to the Union's local mailbox so it could be recorded in the Union's database as resolved.

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produced to him nor at the hearing. I credit Stelfox's testimony surrounding the conversation about his request to Dunlap for her statement and FMLA documentation.

[11] Initially, management was going to maintain the LOW in Dunlap's personnel file for 2 years.

[12] Hayes is a retired letter carrier and former union representative.

G. Stelfox's Alleged Coercive Statements on August 15

Dunlap testified that on August 15 at the beginning of her 7:30 a.m. shift, she attended a "Stand-up Talk" meeting which lasted about 10 minutes.[13] Following the meeting, Dunlap claims that she went to Stelfox and asked him to return her LOW.[14] She attested that she asked him for her copy of the LOW because, after speaking with Perkins and Tamara on August 14, she suspected that Stelfox told management about her plans to file an equal employment opportunity (EEO) complaint against the USPS.[15] His alleged action made Dunlap "uncomfortable" with the way she thought he might handle her grievance. Dunlap testified that she also wanted her copy returned to her because she had marked asterisks next to the dates that she thought should have been covered by FMLA. In response to her demand for the return of her LOW, Stelfox allegedly told her she had a week to grieve the LOW, he did not have to return the LOW to her, and someone told him that Dunlap was not in the Union. (Tr. 25.) Dunlap testified she told him she "understood" but to return her annotated LOW; and she would handle the grievance herself. According to her, Stelfox stated,

> "he said he didn't have it, he didn't have to give it to me – excuse me."
>
> "He didn't have it and he didn't have to give it to me, and that it wouldn't be - - it wouldn't be sent up to Step B for a not a non-union member."

(Tr. 25.) Dunlap claims Stelfox continued by saying that she wanted the union benefits and pay but did not want to pay dues. Dunlap testified that she again told him to return the LOW and walked away. Ultimately, Stelfox gave Dunlap a copy of the LOW but it was not, according to her, the one she originally gave him.[16]

Stelfox categorically denied telling Dunlap that because she was not a union member the Union would not assist with her dispute of the LOW or that it would not advance her grievance to step B of the formal grievance process. He, in fact, denied speaking with Dunlap on August 15, noting that because of his airport assignment, he would not have been at the facility during the time the conversation allegedly occurred. (Tr. 69–70, 93, 95.)

I credit Stelfox's denial that the August 15 conversation occurred because he was steadfast and unwavering in his denial while Dunlap's testimony was inconsistent on this point. Dunlap testified that when the meeting ended, she went to Stelfox and asked him to return her LOW, but the evidence shows he would not have been in the facility. (Tr. 23.) Dunlap did not claim Stelfox cased mail inside the facility for 2 hours each morning prior to going to the airport. The facts established that: Dunlap's shift started at 7:30 a.m.; she attended a "Stand-Up Talk"

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[13] Dunlap defined a "Stand-up Talk" as a meeting for management to convey to carriers the daily work expectations and activities for the day.

[14] According to Dunlap, no one else was nearby and their discussion was brief.

[15] Since the General Counsel did not, without explanation, call Perkins or Tamara as witnesses, Dunlap's testimony about the substance of their conversations would be hearsay.

[16] Resolution of whether Stelfox returned to Dunlap the original LOW or a duplicate is irrelevant to my decision regarding the merits of the complaint.

meeting which occurs prior to the carriers starting their assignments; the talk lasted 10 minutes; daily Stelfox leaves for his airport run immediately after clocking in; there was no evidence that Stelfox attended these meetings prior to leaving for the airport; Stelfox's airport assignment keeps him away from the facility for about 2-1/2 hours; and there is no evidence Stelfox did not complete his airport run on August 15. Based on these facts, including the overall evidence, I find it more credible that Stelfox would not have been at the Wheeler station when the conversation with Dunlap allegedly occurred. Even Dunlap recognized the fallacy of this timeline when on cross examination she attempted to redirect the timeline to fit her narrative. On cross-examination, Dunlap denied previously testifying that she asked Stelfox for the LOW before he left for the airport. She then changed her testimony to she was not certain when Stelfox left for the airport; and rather was unsure of when, besides in the morning, that she had the August 15 conversation with him. (Tr. 49–50.)

H. Rapisardo's alleged coercive statements to Dunlap

During his tenure as a union official Rapisardo has personally handled more than 2000 employee grievances. He gave testimony on the structure of the grievance process noting that union stewards learn about employee disciplines through either the affected employee or management. Moreover, Rapisardo provided undisputed testimony that even if an employee does not specifically ask a steward to file a grievance on their behalf, if a steward feels discipline has been issued to an employee in violation of the CBA, the steward can file a grievance even without a request from the affected employee. Forty to 45 percent of grievances are settled at step A.

As the vice president—national secretary, Rapisardo received the monthly dues report from the National Union. He believes the reports are sent to prod the locals to encourage nonmembers to join the union. Rapisardo and the majority of other local union vice president—financial secretaries simply place the reports on a clipboard by their desks and take no further action. Likewise, Rapisardo has not forwarded the dues list to anyone nor informed union stewards which employees are on the list and does not believe union stewards "typically" know who is or is not a member. However, Rapisardo acknowledged that since he has been serving a detail as president of the Union, he encouraged board members at a January or February 2019 executive board meeting to speak with employees individually about becoming members with a focus on employees who had never been union members. Each board member was given a list of names with an indication by each name as to whether the person had ever been a union member. They were responsible for speaking with a couple of names on the list and as a result of those efforts, six employees became members. Since Stelfox is not on the executive board, he did not participate in those efforts. Rapisardo insists that the union processes member and nonmember grievances the same.

In the afternoon on August 15 or 16, Dunlap telephoned Rapisardo upset about the settlement agreement Stelfox negotiated on her behalf.[17] He allowed her to complain to him for

[17]As vice president—financial secretary, Rapisardo is informed by the National Union when letter carriers terminate their membership, which is how he learned in 2017 that Dunlap resigned. He did not discuss that decision with her.

about 2 to 3 minutes before interrupting to say the case had been resolved and it was a fair settlement. Rapisardo also recalled that Dunlap may have called his attention to her non-member status and his response to her was it was irrelevant because the Union fulfilled its legal obligation to fairly represent her and reiterated that the settlement was fair. Raspidaro admits Dunlap "was not happy" and continued to vent her displeasure until he told her that "I don't have to continue to keep talking to you. I have got things to do" and hung up the phone. (Tr. 125.) Shortly after their conversation, Dunlap called again and told him that she had taped their last conversation. Rapisardo responded, "Well, I don't really even know if you are supposed to [do] that, but second of all, I didn't say anything wrong," and hung up the phone. (Tr. 126–127.) The second conversation lasted less than a minute and they have not spoken since that call. Rapisardo testified that based on his past experiences with Dunlap she has never been satisfied with a settlement. I credit Rapisardo's version of the two conversations based on my credibility determinations as discussed in the next section.

I. Credibility Determinations

Based on the witnesses' demeanor and the evidence, I find overall that Stelfox was a more credible witness than Dunlap. Stelfox and Dunlap both gave questionable testimony at certain points. For example, during an exchange on cross-examination with Counsel for the General Counsel Bradley Fink (Fink), Stelfox gave responses that appeared deliberately obtuse. He insisted that he did not understand Fink's definitions of "a lot" and "common." The following exchange between Fink and Stelfox illustrates this point:

> Q: [D]o a lot of individuals represented by the Union come to you about how managers are treating them?
>
> A: How do you define a lot again?
>
> Q: Is it common or uncommon for individuals represented by the Union to talk about how managers are treating them, to you, in your role as Steward?
>
> A: I don't know how you define common, but I would say that if I had to give you a straight answer, I would say, "Yes, they - - they come to me about everything."

Although Stelfox answered, presumably using Fink's definition of "common," he later again claimed that he did not understand the definition of the term as shown by the following exchange:

> Q: Do you hear the word "harassment" regularly during these conversations?
>
> A: It—each case—each case—each case is unique to itself. I don't see a common theme there.

> Q: Is - - is it your testimony that it is not common for individuals to claim they are being harassed by Stewards—by management when they come to you - -
>
> A: Well, you would have to give me your precise, specific definition of common. At what point mathematically does it become common. I mean, relative to the percentage of the employees, relative to how much I am exposed to them?
>
> Q: Have you heard—
>
> A: Relative to the contextualization of the fact.

(Tr. 103–104.) However, in response to questioning from the Respondent's attorney, Joshua Ellison (Ellison) using the same terms, Stelfox had no difficulty understanding their meaning without further clarification. (Tr. 70, 108.) Based on his demeanor and tone of voice, however, Stelfox gave me the impression that rather than trying to avoid a truthful response, he was attempting to show he could match wits with Fink. This impression is supported by the boastful manner in which he testified about his educational background and work experience pre-USPS. While his manner may have been annoying, it is certainly not so egregious as to discount his entire testimony.

The General Counsel points to Stelfox asking Dunlap, sometime in the first week of August, whether she was a union member as evidence of that he is a less credible witness than Dunlap. (Tr. 75–79.) I find that although Stelfox's testimony about his question to Dunlap on whether she was in the Union was awkwardly phrased, it does not negatively impact my assessment that overall, he was credible. In fact, his candor in admitting to the statement, while knowing that he is being accused of using similar language to coerce Dunlap into joining the Union, is a contributing factor in my positive impression of his overall truthfulness as a witness. Dunlap, on the other hand, was not as forthcoming in her testimony. For example, she refused to even acknowledge the obvious, that even if 2 of the 19 dates listed on the LOW were covered under FMLA, the USPS arguably had a reasonable basis for issuing her discipline because the vast majority of absences were uncontested. (Tr. 64.)

The General Counsel also argues that Stelfox's testimony should be discredited because (1) the timing surrounding Stelfox's settlement of the grievance is suspicious; (2) Stelfox failed to gather additional evidence from Dunlap prior to settling the case; and (3) Stelfox claimed he was not in the facility on the morning of August 15. I do not find these factors significant in assessing Stelfox's credibility. First, Stelfox provided undisputed testimony that he had to file a grievance before going through "the Step process to settle it." (Tr. 92.) Dunlap admitted that because of her belief Stelfox shared information about her with management, she had second thoughts about him representing her. Her change of heart therefore indicates that she had to have asked or intended for him to represent her in the grievance process. Moreover, the undisputed evidence established that a union steward can file a grievance even without a request or permission from the affected employee if the steward believes the CBA has been violated. It logically follows, therefore, that the steward has the authority to settle a grievance without permission of the employee. Also, simply because the Union must file within 14 days of the date

it or the employee learned of the grievance's cause does not mean the Union is required to wait until the end of the time period before acting.

Second, the parties may dispute whether Stelfox first asked Dunlap to provide him with a statement outlining her position and documentation to support her FMLA claim or if she volunteered the information. Regardless, it was not incumbent on Stelfox to request the information from her, particularly since she had already explained to him the bases for her objection to the LOW prior to him filing and settling the matter; and she admitted to knowing that standard protocol for filing a grievance was to include a statement.

Third, I am not persuaded by the General Counsel's argument that Stelfox was not credible in claiming that he was not in the facility on August 15. According to the General Counsel, Stelfox saw Dunlap at the facility on three occasions, therefore it is possible he returned from his "airport run on August 15 in time for the conversation Dunlap testified about." (GC Br. 7.) The General Counsel therefore argues Dunlap's testimony should be credited that Stelfox spoke with her that morning; and he made the coercive statements attributed to him in the complaint. For me to accept the General Counsel's position, I have to credit Dunlap as the more credible witness, which I do not for the reasons stated below.

I found Dunlap to be an evasive and less than credible witness. In addition to her overall demeanor, her testimony on several key points contributed to my finding that she was not a credible witness. As an example, Dunlap testified that she told Stelfox on June 4, she was not in the Union but then insisted she told him in a conversation in August. She also claimed that on August 15 when she asked Stelfox to return her copy of the LOW, he responded that she had a week to grieve it, he did not have to return it and "someone had told him that I wasn't in the Union." (R. 24–25.) Dunlap's testimony on these points does not ring true because: (1) why tell Stelfox again, unprompted, that she was not in the Union if she had already made it clear to him on June 4; and (2) why would Stelfox tell her "someone told him" that she was not in the Union if, according to her, she had already told him this on June 4 ? Dunlap's testimony about Stelfox's request for a statement and supporting FMLA documentation is equally troubling and confusing. First, she testified that, in response to Stelfox's request, she prepared a statement of the circumstances involving the LOW after he returned a copy of the LOW. (Tr. 59.) However, Dunlap later stated that Stelfox returned and left on her case a copy of the LOW along with the settlement agreement. This raises the question of why she would prepare a statement for Stelfox after she knew the grievance had been settled? During her testimony Dunlap did not provide a credible explanation for this illogical sequence of events. Moreover, Dunlap testified that on the morning of August 15, she asked Stelfox to return her LOW because she decided to handle the matter herself. If this were true, however, Dunlap would not have had a reason to write a statement or provide Stelfox with FMLA documentation. Dunlap's third version involving the statement and FMLA documentation is she did not give Stelfox the statement and FMLA documentation when she spoke with him on August 14 (or August 15) because she needed authorization from management to union business during work hours; and was fearful of being disciplined. However, the evidence shows that she was unconcerned with violating that rule and risking discipline when she spoke with Stelfox during work hours about her uniform issue the first week of August and when she discussed the LOW with him on August 14. It is therefore highly unlikely that the seconds it would have taken to give him the additional information

would have caused her any consternation. Despite Dunlap's claim that she had the statement prepared and the FMLA documentation to give Stelfox, tellingly neither was produced at trial.

As a factor to consider in assessing Dunlap's credibility, the Respondent points to the brief period between Dunlap's alleged conversation with management which caused her to question Stelfox's ability to represent her and when she asked Stelfox to return her LOW. (Tr. 10–11.) In its brief the Respondent notes,

> Dunlap first testified that the conversation with at least one of the supervisors took place "the day that I—that I found the settlement on my ledge," August 15, even though she also testified she asked Stelfox to return her copy of the letter of warning shortly after arriving at work in the early morning of August 15, well before she received a copy of the settlement. It is obviously impossible for Dunlap to have had a conversation with a supervisor that prompted her to demand the return of her Warning Letter after she made that demand, but that was nonetheless her initial testimony.

(R. Br. 10–11; Tr. 47–50.) The Respondent continues by noting that once Dunlap realized the contradiction, she quickly changed her testimony to state that she had the conversation with a supervisor on August 14 although she previously testified it occurred on the date Stelfox placed the settlement on her case, August 15. Likewise, Dunlap later alleged she was "not exactly sure" when she asked Stelfox to return the LOW; and it was either in the morning or early afternoon. (Tr. 47–50.) Shortly, thereafter, she again changed her testimony to the alleged conversation with the supervisor happened sometime in the morning. (Tr. 50.) I do not believe her testimony because it has too many contradictions and ambiguities. Since, Dunlap admittedly cannot recall when the alleged conversation with the supervisor occurred, I find this is another reason for discounting her testimony and I concur with the Respondent's assessment on this point.

Finally, I find that the overall circumstances also weigh against Dunlap's credibility. Rapisardo has known since 2017 that Dunlap was not a union member and, according to Dunlap, Stelfox learned of her nonunion status in June. Yet, there is no evidence that from 2017 until the matter at issue arose that the Union was accused of or made unlawful statements to coerce Dunlap or any other employee to join the Union. The evidence established that the Union processed and successfully represented Dunlap in grievances several times after she resigned her membership in 2017. Moreover, I found Rapisardo to be a very credible and convincing witness based on his demeanor and the overall consistency of his testimony. It is telling that the General Counsel could find only one minor point in Rapisardo's testimony to argue for why I should reject his entire testimony. The General Counsel contends that Rapisardo's testimony should not be credited because in his August 15, telephone conversation with Dunlap he could not recall if she told him that she was not in the union. It is irrelevant, however, because the evidence is undisputed that as the Union's vice president—financial secretary the National Union notified him monthly if there were members resigning. Consequently, he knew in 2017 that Dunlap was not a union member so his inability to specifically recall whether she told him on their August telephone call is unimportant to the merits of the case.

Based on the evidence, I therefore find no convincing evidence that Stelfox and, or Rapisardo decided that getting Dunlap to join the Union, after a 2-year absence, was so important that they were willing to resort to illegal means, i.e., the alleged coercive statements. Accordingly, I find that overall Stelfox and Rapisardo were more credible than Dunlap; and, as previously discussed, Dunlap's testimony on key points does not ring true.

III. Discussion and Analysis

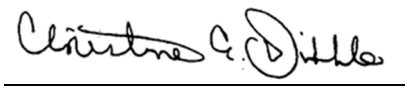
Section 8(b)(1)(A) of the Act provides that it is an unfair labor practice for a labor organization or its agents to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act by forcing or requiring any employee or self-employed person to join any labor or employer organization. The rights guaranteed in Section 7 include the right "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." See *Brighton Retail, Inc*., 354 NLRB 441, 441 (2009). In determining whether remarks violate the Act, the appropriate test is "whether the remark can reasonably be interpreted by the employee as a threat." *Consolidated Bus Transit, Inc*., 350 NLRB 1064, 1066 (2007), enfd. per curiam 577 F.3d 467 (2d Cir. 2009).

The General Counsel alleges that Respondent violated the Act when through its agents, Stelfox and Rapisardo, they threatened not to help or process grievances by nonmembers and stated they did not have to speak with or spend time on nonmembers. Specifically, the General Counsel posits that the violations occurred when: (1) on August 15, Stelfox told employees that the Union would not help nonmembers; (2) on August 15, Stelfox threatened not to process grievances filed by nonmembers; and (3) on August 15, Rapisardo told employees he did not have to speak with, or waste time on, nonmembers. (GC Exh. 1.)

The General Counsel's theory is based on Dunlap's discredited version of conversations she had with Stelfox and Rapisardo. Consequently, I find that the General Counsel has failed to prove its case. I did not find Dunlap to be as credible a witness overall as Stelfox and Rapisardo because she prevaricated on certain points, and on occasion her testimony was confusing and nonsensical. In contrast, I credited Stelfox's and Rapisardo's testimonies denying making coercive statements to Dunlap on August 15 because her contradictions far outweigh Stelfox's missteps; and as previously noted I found that Rapisardo was a very credible witness. Moreover, their versions of the conversations were more logical given the overall evidence and, unlike Dunlap, have the ring of truth.

Accordingly, I recommend that the complaint be dismissed.

Dated: Washington, D.C. July 6, 2020



Christine E. Dibble (CED)
Administrative Law Judge